

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

FRANCISZEK BYSTRON,	:	
Plaintiff	:	CIVIL ACTION NO. 3:20-1014
v.	:	(JUDGE MANNION)
ANGELA HOOVER, <i>et al.</i>,	:	
Defendants	:	

MEMORANDUM

Presently before the court is the October 15, 2020 Report and Recommendation (“Report”) of Magistrate Judge Martin C. Carlson, (Doc. 12), which recommends that the complaint of *pro se* plaintiff Franciszek Bystron be dismissed without prejudice under Fed.R.Civ.P. 41(b) for failure to prosecute.¹ The Report finds that despite the court’s orders, plaintiff failed to file a proper complaint stating his specific allegations and claims, and

¹It appears that plaintiff, an ICE detainee, seeks injunctive relief regarding the conditions of his confinement due to a violation of the Fifth Amendment’s Due Process Clause. See Alirio R.R. v. Correia, 2020 WL 3249109 (D. N.J. June 15, 2020) (The Court predicted that “the Third Circuit will find, at minimum, that [civil immigration detainee alleging unconstitutional conditions of confinement] can proceed under either Section 2241 or Bivens (for injunctive relief).” “Civil immigration detainees are entitled to the same due process protections as pretrial detainees when the conditions of confinement fall below constitutional minimums.” *Id.* at *11 (citing E.D. v. Sharkey, 928 F.3d 299, 306-07 (3d Cir. 2019)).

failed to file a motion for leave to proceed *in forma pauperis*. To date, the defendants have not been served since no proper pleading was filed by the plaintiff. No objections have been filed to the Report, and the time within which objections were due has expired. For the following reasons, the Report, (Doc. 12), will be **ADOPTED** and, plaintiff's complaint, (Doc. 1), will be **DISMISSED WITHOUT PREJUDICE**.²

I. STANDARD OF REVIEW

Where no objections are made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed.R.Civ.P. 72(b), advisory committee notes; see *also* [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D.Pa. Local Rule 72.3.

²Since Judge Carlson stated the full procedural history of this case in his Report, and since the plaintiff did not object to it, the court will not repeat it herein.

II. DISCUSSION

Judge Carlson analyzes the factors under Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir. 1984), and correctly applies the facts of this case to them, and explains why the plaintiff's action should be dismissed without prejudice under Rule 41(b) due to his failure to prosecute. Thus, the court will not rehash this thorough explanation in the Report.

The court has reviewed the reasons presented by Judge Carlson for recommending that the plaintiff's complaint be dismissed without prejudice, and because the court agrees with the sound reasoning that led the Judge to the conclusions in his Report and finds no clear error on the face of the record, the court will adopt the Report in its entirety.

III. CONCLUSION

In light of the foregoing, Judge Carlson's Report, **(Doc. 12)**, will be **ADOPTED IN ITS ENTIRETY**, and plaintiff's complaint, **(Doc. 1)**, will be **DISMISSED WITHOUT PREJUDICE**. An appropriate order shall follow.

s/ Malachy E. Mannion

MALACHY E. MANNION
United States District Judge

DATE: November 2, 2020

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